

CONSTITUTIONAL CAPITALISM:

Economic Freedom, Social Justice, and the Myth of Modern Liberalism

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Chapter 3: *Social Justice*

Debates in liberal societies between capitalists and social democrats are often conducted as debates about the requirements of liberal justice. On its social or “distributive” interpretation, liberal justice is importantly concerned with the distribution of material goods. Social justice includes the requirement that material goods be distributed so as to secure the conditions in which people can realize the moral powers they have as free and equal citizens. Modern liberals advocate the institutions of social democracy because they care about social or distributive justice.

By contrast, classical liberalism is usually associated with a more limited, “negative” interpretation of justice. According to Adam Smith, “Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbors....We may often fulfill all the rules of justice by sitting still and doing nothing.”¹ Liberal justice, on this reading, is not a property of distributions. It is a property of actions. Justice requires that the state enforce certain uniform rules of conduct regarding the interactions of private citizens.

For classical liberals, the rules of justice the state must enforce prominently include rules protecting the economic freedoms of individual citizens---their right to own productive property and freely to contract with one another. Liberal justice rests on a formal or procedural conception of equality, rather than any substantive or material one. If the rules are followed, and people's rights are respected equally, then there can be no question of using the term "justice" to later criticize or evaluate the overall pattern of holdings that results. Classical liberals have long objected to the idea that the state should enforce some pattern of material holdings across the whole of society. They object, that is, to the idea of social justice.²

According to David Hume, "historians, and even common sense, may inform us, that, however specious these ideas of *perfect* equality may seem, they are really, at bottom, *impracticable*; and even if they were not so, they would be extremely *pernicious* to human society. Hume continues: "Render possessions ever so equal, men's different degrees of art, care, or industry will immediately break that equality. Or if you check these virtues, you reduce society to the most extreme indigence; and instead of preventing want and beggar in a few, render it unavoidable to the whole community."³

So too with more recent thinkers in the classical liberal tradition. Robert Nozick advocates "historical" principles of justice and rejects Rawls's theory of justice as fairness for being "patterned." According to Nozick, the very term of "distributive justice" encourages the mistaken idea that goods come into the world without moral attachments. Goods are produced because of the actions of particular persons. It is a mistake to proceed as though it were somehow an open question of how those goods should be

“distributed.”⁴ Within a society that affirms private rights to productive property and other traditional liberal freedoms, Nozick rejects the “redistributive” approach to justice: “There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make.”⁵

As Loren Lomasky points out, classical liberals might accept the use of the term “justice” in a wider if less precise sense. For example, one might use the term “justice” to refer not to what people are obligated to do politically, but to what it might be good or praiseworthy for them to do. But in no case can social justice play the role of a process-independent, final standard of evaluation that might justify the coercive use of state power toward some distributive goal. As Lomasky describes the classical liberal position, “ideals of ‘distributive justice’ have no political standing.”⁶

In all these ways, thinkers in the classical liberal tradition react negatively to the idea of social or distributive justice. Indeed, classical liberals think that that idea of social justice is so alien to the biology of their preferred institutional regime that they react almost allergically to the suggestion that social justice is the appropriate standard of evaluation of liberal societies. I think this is unfortunate. The negative reaction of classical liberals to the idea of social justice is a symptom that those thinkers are suffering from a malady that I call ‘*social justicitis*.’

Social justicitis is a pattern of allergic reaction to that idea of social justice. Within the systems of classical liberal thought, this pattern typically begins as a reaction against the use of social justice talk at the level of immediate political practice that I call public policy. This is no surprise: after all, within actual political campaigns, “social justice” has long been the rallying cry of socialists and other opponents of commercial society. After securing a biological foothold there, however, the malady quickly infects the whole body. It spreads first to the level of regime advocacy that I call political theory and, unless it is arrested there, it soon masquerades as a reason to reject the ideal of social justice at the identificatory level of political philosophy.

A main source of contemporary *social justicitis*, and arguably the most prominent sufferer of this malady, is Friedrich Hayek. Through his theory of spontaneous order, Hayek developed the most sustained and prominent classical liberal argument against social justice. By analyzing Hayek’s argument, I hope to show how classical liberals can be cured of *social justicitis*. We need to take care, however, that our cure does not kill the patient. Thus I need to show how classical liberals can accept social justice as the ultimate normative standard of political evaluation while retaining their allegiance to the ideals of wide economic freedom and a government of strictly limited legislative power. To accomplish this, my idea is seek a cure that is based on biological material from of one of their own. I focus on Hayek for this reason. Hayek’s theory of spontaneous order offers a powerful over-the-counter treatment for the *social justicitis* that has so long afflicted thinkers in the liberal line.

Hayek's critique of social justice rests on the claim that only products of deliberate human design can be just or unjust. Intriguingly, though, spontaneous social orders of the sort that classical liberals advocate are *themselves* products of deliberate human design. This idea opens a powerful pharmaceutical opportunity. Hayek's spontaneous order theory contains the secret ingredient we need to produce a (nontoxic) cure for social justicitis: Benedyrl for free-marketeers.

Hayek's Critique of Social Justice

Hayek runs his critique of social justice across all three of the argumentative levels we distinguished in the previous chapter. Sometimes he focuses on what he sees as the pernicious tendencies of talk about "social justice" at the level of public policy. In the context of the political debates of his time, Hayek notes, appeals to social justice are enormously effective. "Almost every claim for government action on behalf of particular groups is advanced in its name, and if it can be made to appear that a certain measure is demanded by 'social justice,' opposition to it will rapidly weaken."⁷

More often, though, Hayek seeks to run his critique at a more foundational level. For example, Hayek argues that the term "social justice" is "empty" and lacks "any meaning whatever"---at least within the context of a society affirming traditional liberal values.⁸ He compares a belief in social justice to a belief in witches or ghosts.⁹ Because of its effectiveness as a cloak for coercion, Hayek asserts, "the prevailing belief in 'social justice' is at present probably the gravest threat to most other values of a free

civilization.”¹⁰ To talk of justice in terms of social justice is “an abuse of the word.”¹¹ According to Hayek, “the term is intellectually disreputable, the mark of demagoguery or cheap journalism which responsible thinkers ought to be ashamed to use because, once its vacuity is recognized, its use is dishonest.”¹²

To give the concept social justice any meaning within a free society one would have to completely transform the social order itself. To make sense of “social justice,” Hayek tells us, we would be required “to treat society not as a spontaneous order of free men but as an organization whose members are all made to serve a single hierarchy of ends.”¹³ To achieve this transition, central values that formerly governed that society—most notably the value of personal freedom—would have to be sacrificed. Instead of laws taking the form of impersonal rules equally applicable to all, laws would increasingly need to take the form of specific commands issued by authorities on the basis of information only they could be in position to hold. The very form of social order found with the Great Society is therefore incompatible with social justice as a concept. To accept the standard of social justice requires the rejection of the Great Society and its transition into a regime of a very different type. Distributive justice is not the realization of the liberal promise of equal freedom: it is the betrayal of that promise.

Like many writers in the liberal tradition, however, Hayek does not always clearly distinguish between argumentation at the moral identificatory level of political philosophy and argumentation at the regime-advocacy level of political theory. When we study Hayek’s argument in light of these distinctions, however, an interesting pattern emerges. On the level of

political theory, Hayek's critique of social justice generates some potentially powerful analytical tools that might be used by classical liberals to advocate the institutions of wide economic freedom and government of strictly limited powers (this is the level, recall, at which we first begin attending to issues of feasibility). At the level of political philosophy, however, Hayek's "critique" demonstrates the clear need for advocates of classical liberalism to affirm some conception of social justice. In combination, therefore, findings on both levels of Hayek's argument provide building blocks for my hybrid theory of liberalism: constitutional capitalism.

Order, Information and Rule

Hayek's critique of social justice is based on his idea of order. For Hayek, an *order* is: "a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct explanations concerning the rest, or at least expectations that have some chance of proving correct."¹⁴ To unpack this idea, let's consider three (admittedly homey) examples: a grouping of sugar crystals, a Lego model, and the collection of items distributed across the floor of a messy child's room.

Consider first a grouping of sugar crystals, say, a cluster of rock candy on a string. Rock candy forms as a result of the molecular properties of sugar (sucrose) and water. When sugar is dissolved in warm water, the lattice bonds of the sugar crystals are broken. The sugar molecules bond to the molecules of water, creating a solution. When the solution is cooled, the solubility of the water decreases and the solution becomes supersaturated. If

the cooling is continued, and a host is introduced---say, a stick or a string---the sugar molecules begin to re-crystalize on the surface of the host. As the process continues, the lattice bonds of the sugar molecules continue to re-form as candy crystals, creating larger and larger candy crystals.¹⁵

Contrast the string of rock candy with another complex structure, say, a Lego model of the Death Star. The Death Star is one of the most complicated of all the models made by Lego Group (a privately held Dutch company). The large box contains 3,449 small plastic pieces and an instructional booklet with many painstaking pages of step-by-step construction instructions. The rules are highly specific and a person, or team of persons, must carry out each step precisely as specified. Each instructional step requires that every previous step be completed precisely in accord with the overall plan.

The Lego model of the Death Star and the string of rock candy are both complex organizational structures. Yet each is a product of an importantly different type of organizational process. The bringing together of the Lego parts into the form of the completed Death Star requires the constant application of goal-directed reason on the part of some organizing agent or team of agents (in this case, an agent that is external to the model being constructed). It is that agent's commitment to the end specified in the instructions, and the agent's skill in interpreting and carrying out those instructions, that determines how closely the resulting assemblage of plastic pieces will resemble the picture on the box.

By contrast, the molecular units that are to compose the rock candy crystals are not moved by any unified agent---whether internal or external---according to some overall plan. The crystals are built as a result of the way the particular units react to one another, with those reactions in turn being governed only by general rules of molecular motion. No one can know in advance what precise shape the rock candy will take. Unlike the principles governing the construction of the Lego model, the principles governing the construction of the crystals are endogenous or intrinsic. A rock candy crystal is a self-organizing or spontaneous system. The model is *made*; the crystals *grow*.

Of course, not every collection of parts counts as an order in the systems theory sense. Consider our third example, the items on the floor of a child's room. There may be a great variety of things strewn across the surface of the floor: a pajama top, a wet towel, a stuffed toy eel, and a homework assignment (due tomorrow). These items are not fixed in any set places in relation to each other. While the items may often be in motion, there are no rules governing the changes that occur among them. When crossing the room, the boy may kick the eel so that it now rests atop the wet towel. In picking up his pajama top, he may inadvertently nudge the homework assignment so it now rests completely under the bed.

If we knew the exact location of one of the items on the floor (for example, if we know that that the wet towel is now precisely in the middle of the floor), this information would not help us at all in predicting the locations of the other items around it. Even if we had general knowledge of the causes of change on the child's floor (that the child often walks between his bed and

his bulletin board) and were given further pieces of locational information (the pajama top is now adjacent to the stuffed eel) this would not help us chart the overall pattern, the direction or rate of change, of the items on the floor with respect to the others. The units of this grouping are not related to each other according to any system of organizing principles, whether intrinsic or extrinsic. These items can meaningfully be picked out as a group---“differentiated,” as the political geographers might say.¹⁶ But this property does not make the collection of items on the child’s floor an order in our sense. This grouping is not an order, whether made or grown, in the system’s theory sense. Its existence is merely definitional.

Hayek’s critique of distributive justice relies upon a similar set of distinctions applied to human groupings. Hayek distinguishes two great types of social order, and a form of rule or law correspondent to each. To demarcate the two types of social order, Hayek uses the classical Greek terms *cosmos* and *taxis*. He invokes two further Greek terms, *nomos* and *thesis*, to distinguish a type of rule appropriate to the construction of each type of social order.

By order, recall, Hayek means a grouping so arranged that we can use our knowledge of some parts to form correct predictions about the grouping’s other parts. Not all human groupings count as orders in this sense.¹⁷ But many human groupings do. Indeed, it is the possibility of orderliness in social life that makes purposive action possible. To satisfy even the simplest of ambitions, humans must consider the nature of the rules that govern and coordinate the behavior of the people in the various social groupings in which they take part. It is our ability to learn which rules are likely to

effectively govern the likely actions and reactions of other parts of the system, and to combine our understanding of the operative rules with particular pieces of information held by each of us, that makes even the simplest forms of intentional action possible in the world.

Hayek uses the term *cosmos* to describe a spontaneous order, the social analog of our collection of rock candy crystals. On the social level, a cosmos is a type of human order that forms or comes to exist independent of any act of human will directed toward that end. Because it was not constructed according to the dictates of any unified will, there exists no single end or purpose that the system as a whole must serve.

The form of rule that is distinctive to cosmic structures—a type of rule that Hayek calls *nomos*—reflect this openness about ends. By *nomos*, Hayek means “a universal rule of just conduct applying to an unknown number of future instances and equally to all persons in the objective circumstances described by the rule, irrespective of the effects which observance of the rule will produce in a particular situation.” Hayek continues, “Such rules demarcate protected individual domains by enabling each person or organized group to know which means they may employ in the pursuit of their purposes, and thus to prevent conflict between the actions of the different persons. Such rules are generally described as ‘abstract’ and are independent of individual ends.”¹⁸ Nonetheless, the regularities of behavior that characterize the elements of a cosmos may make that type of order extremely useful for the diverse purposes of its members. In social settings, *nomoi* function like the rules of molecular chemistry in the case of rock candy.

By contrast, Hayek uses the term *taxis* to describe a made order, the societal analogue of our Lego model. By *taxis*, Hayek means a group of humans brought together into an organizational structure with the aim of realizing some unified, identifiable goal. Hayek calls the distinctive form of rule distinctive to taxitic structures a *thesis*: “any rule which is applicable only to particular people or in the service of the ends of rulers.” Theses may be general to various degrees and will normally be general enough to refer to refer to a multiplicity of particular instances. As a logical matter, the difference between *nomos* and *thesis* is necessarily one of degree rather than kind. But the distinctive tendency of theses is to shade imperceptibly from rules in the usual sense into particular commands.¹⁹

Within a *taxis*, the knowledge and purposes of the organizer determine the particular shape of the order at any given time. Members of a *taxis* are put in their places and assigned their distinctive tasks in light of the end being pursued by the grouping as a whole.²⁰ In this sense, a body of *theses* is like the rule-book in our Lego box, and unlike the laws of molecular chemistry.²¹

Freedom and Order

What type of order is a most appropriate for people who affirm the liberal ideals of free and equal citizenship? It would be difficult for those ideals to be realized within non-ordered social conditions—the analogue of the items on floor of the child’s room. The literature on “failed states,” perhaps, could be read as providing examples of social worlds that fail to count as *orders* in the system’s theory sense.²² Such worlds lack the predictability of rule-

governed societies, whether taxitic or cosmoic. Investments, whether of capital, time or even of attention, become problematic in such conditions. Without orderliness, human reason has trouble getting traction in the world. Social change is a product of drift and happenstance, rather than of cooperation.

For Hayek, the greatest example we have of cosmos is liberalism, especially as interpreted within the English and Scottish tradition. The great examples of taxitic social order are provided by the socialist states of the 20th century. Hayek thinks that his arguments against socialism, though, also push against social democratic interpretation of liberalism, precisely because those institutional regimes have as their goal the pursuit of social justice.

First, a *cosmos* typically can make effective use of more information than can a *taxis*. To pursue a goal by means of a *taxis* organization, the only information that can be utilized in the rational structuring of the relations of its members is information that can be gathered, organized and acted upon by the directing agency. This directing agency plays a role within the organizing structure of a *taxis* much like that played by a set of fuses (or, in the case of state socialism, perhaps, of a central fuse) within the electrical system of a house. Whatever the other advantages of such organizational systems, the unit-capacity of those organizing elements place a limit on how much information can rationally be put to use within the organization. “The knowledge that can be utilized in such an organization will... always be more limited than in a spontaneous order where all the knowledge possessed by the elements can be taken into account in forming the order without this knowledge being first transmitted to a central organizer.”²³

Taxitic structures operate under a complexity constraint that is typically more restrictive than that within cosmoi.²⁴ This information consideration may itself help us determine whether it is best to understand modern society as a whole as a cosmos or taxis. When we consider a comprehensive system such as a society---a system the features of which may dramatically influence the whole shape of the life-chances of its members---the most important determinant, however, is moral. This moral determinant is derived from the factor that generates that complexity constraint itself. In deciding whether it is appropriate to treat some society as a taxis or as a cosmos, we must ask whether it is appropriate to treat all the members of that grouping as though they all shared a single, predetermined goal, a goal that could be in principle knowable in advance of actions undertaken by any of them.²⁵ We ask, that is, whether it would be appropriate for those people to live their lives within a system of rules that takes the form of particular commands. For Hayek, freedom is essentially a matter of individuals using their own information in pursuit of their own ends, commands in service to some antecedently defined goal or end.

[[In place of the idea that a unified goal or end, Hayek says, thinkers the liberal tradition treat liberty as the highest value. Mill defines freedom as “pursuing our own good our own way.” Similarly, Hayek defines freedom as using one’s own information in pursuit of one’s own ends. The idea that human beings should be allowed to direct their own lives is reflected in the form that rules take within liberal societies. Rather than understanding laws as particular commands issued from authorities in light of their best determination of what immediately needs to be done in order to advance the

society toward its given social end, liberals see rules as general, multi-purpose tools. Rules of this form facilitate the creation of an order in which individuals may coordinate their activities so each might increase the likelihood that his own purposes and ends might be realized.]]

Hayek writes, “To judge actions by rule, not by particular results, is the step which made the Great Society possible. It is the device man has tumbled upon to overcome the ignorance of every individual of most of the particular facts which must determine the concrete order of a Great Society.”²⁶ This approach to law, precisely because it is impersonal and general, enables each person to act on the basis of information that is often available only to that individual. For this reason, the form of social order that values freedom thus turns out to bring about a greater satisfaction of human aims than any deliberate human organization could hope to achieve.

When Hayek says that this system was “tumbled upon,” he means that these were discovered through the experiences of countless human encounters rather than being created through some deliberate process. The rules that make up the liberal system did not spring forth ready-made from the mind of any philosopher or from the deliberations of any legislative body, the way the booklet of directions in a Lego box might have been created. Instead, the rules emerged through a process that Hayek describes in evolutionary terms. Hayek says, “The rules of conduct which prevail in the Great Society are...not designed to produce particular foreseen benefits for particular people, but are multipurpose instruments developed as adaptations to certain kinds of environment because they help to deal with certain kinds of situations.”²⁷ Hayek likens cosmic rules to a pocket-knife. A person setting

out on a walking tour may take along the pocket-knife not for a particular known anticipated use but because past experience has shown the general value of having a knife along. So too, Hayek explains, “the rules of conduct developed by a group are not means for known particular purposes but adaptations to kinds of situations which past experience has shown to recur in the kind of world we live in.”²⁸

Appeals to “social justice” threaten to destroy the fruit of this evolutionary process. State socialism represents the constructivist approach to social rule-making in its extreme form. But Hayek sees the European branch of liberalism favored by social democrats as also founded on a commitment to constructivist, rather than evolutionary, forms of rationality. Social justice is a quintessential product of constructivist rationality.

Justice, Hayek emphasizes, applies only to situations that are the product of someone’s will. To make sense of the concept social or distributive justice, the rules governing the Great Society would need to be changed so that resulting distributions could be thought of as being the result of someone’s will. A demand for social justice is a demand that the form of social order be changed from a cosmos into a taxis. The processes of social growth and change in that order would need to be altered so that the society would be less like the growing rock candy crystal and more like the Lego model undergoing situation-specific assembly. This change can be affected only by a change in the character of the rules governing the society.²⁹ General, multi-purpose rules need to be replaced by more finely tailored directives. In Hayek’s terminology, *nomoi* must be replaced by *theses*. [[for jt, perhaps: social construction via agents acting in light of constitutional protections

becomes replaced by social construction via agents following legislatively tailored directives]].

Hayek thinks liberal democratic states are particularly vulnerable to attacks on freedom via demands for “social justice” at the immediate level of public policy. After all, the appeal to social justice is an appeal to inject human intentionality directly into parts of the social world that stand visibly in need of improvement. It is an appeal for *somebody* to do *something*.³⁰ However, Hayek says the doctrine of social justice threatens to destroy the very basis of morality itself: gradually at first, but then every more completely, it replaces the ideal of freedom of personal decision with the habit of dependence upon other people’s power.³¹ Echoing concerns expressed by David Hume long before him, Hayek writes, “like most attempts to pursue an unattainable goal, the striving for it will produce highly undesirable consequences, and in particular lead to the destruction of the indispensable environment in which the traditional moral values alone can flourish, namely personal freedom.”³²

Society in the strict sense, as opposed to the idea of government itself, is incapable of intending to bring about any particular distribution of goods that might in itself be regarded as just or unjust. There are no rules of just individual conduct upon which individuals in a market order might act that might bring about such a (putatively desired) distribution, and thus no way for any of the members of society to know what actions they ought to perform to realize the desired distribution.³³ The only way a society could achieve social justice, therefore, would be for the members of that society to submit to a governmental apparatus that would specifically direct the actions

of each so that the desired distribution could be realized and maintained. Such an apparatus, in issuing directives to correct for inequalities that would arise between individuals or different classes of individuals would have to abandon the ideal of treating all citizens according to the same rules. This would be to abandon the ideal of personal freedom and in so doing sever the concept of individual decision-making, which is the very root of liberal political morality.

Benedyrl for Free-Marketeers

So Hayek rejects the idea of social justice in an uncompromising way. Within the liberal world of the Great Society, there is not even conceptual space for the idea of social justice. Within such a society, Hayek tells us, the phrase social justice “does not belong to the category of error but to that of nonsense, like the term ‘a moral stone.’”³⁴

However, Hayek sometimes affirms the idea of social justice, at least as a logical concept. For example, he tells us that “the benefits and burdens...apportioned by the market would in many cases have to be regarded as very unjust if [they occurred as] a result of deliberate allocations to particular persons.”³⁵ Of course, as Hayek emphasizes, in a free society such distributional patterns are not the result of deliberate design, and thus he says the concept justice cannot be applied to their evaluation. But what evaluative standard is Hayek invoking when he says that some market distributions, if they had been intended, would be unjust? Hayek’s view, it turns out, is not that society-wide distributional patternings are themselves inappropriate objects for evaluation by standards of justice. It is the

application of that standard to patternings that lack intentionality that's inappropriate. So Hayek's argument against social justice rests on his point that in free societies intentionality does not seep through the system, rather than on the claim that there is no logical space for talk about the justice of distributions of goods across a society.

However, all political orders are the product of human intentionality. Consider our paradigm of spontaneous order, the crystals of rock candy on a string. As the solution cools, crystal facets begin to form according the general rules of molecular chemistry. The particular dimensions and features those crystal structures will take are beyond the predictive power of even the most sophisticated scientist. The crystals grow according to their own internal principles. No one controls or intends the precise outcome of that process of growth. And yet, at a more general level, human intentionality and conscious design saturate the entire process. After all, some one or some group had to decide to create the conditions in which the candy crystals could spontaneously form. Someone had to mix up and heat the solution of sugar and water. Someone had to cut the piece of string to some desired length, weight one end, attach the other end to a pencil or other support, and then dip the weighted end of the string in. The makers of rock candy are in this way very like the designers of a constitution to govern a liberal society. Even without being able (or seeking) to control the details of the order that will emerge, both sets of orders require a maker, and that maker's intentionality pervades the order that results.

According to Hayek, the rules of just individual conduct that most effectively govern a liberal social order are rules we discover, rather than

rules that we attempt to create for ourselves. But this jurisprudential theory--even for those who accept it----does not eliminate the role of intentionality in the formation of social orders. After all, we also discover rather than create the molecular rules governing candy crystal formation. Such discoveries do not eliminate the human intentional element in the case of candy making. On the contrary, it is our discovery of such rules (or our “construction” of them) that gives intentionality its traction in the world.

Experience and observation have taught candy makers that different rates of cooling, like different volumetric ratios of sucrose to water, will tend to produce crystals of different shapes and sizes. Makers of candy know that sugar crystals produced in a spotlessly clean container will tend to be larger than those produced in less clean containers, since in the clean container the molecules reform intensively on the string rather than being dissipated on other microscopic features of the environment. Sophisticated candy makers have learned that by introducing seed crystals to the string, they can produce dramatically larger crystals: seed crystals encourage the lattice bonds of the sugar molecules to reform themselves more intensively on the site of preexisting crystals, whatever their size. It is knowledge of molecular rules that makes human intentionality effective, given some norm that allows us to identify good candy-making from bad.

With sugar candy orders, so to with human social orders, once basic laws are discovered, we employ intentionality to tweak the system to our purposes. In the political domain at least, those purposes are defined ultimately by our theory of justice. Hayek, following Smith, often compares the order of the Great Society to a complex game. But as Hayek himself notes, we must

always seek to control unwanted outcomes “by improving the rules of the game.”³⁶ In Hayek’s view, people have consented to retain and agreed to enforce the rules of just individual conduct associated with classical liberalism because they have discovered that following such rules best improves the chances of all to have their wants and needs satisfied. This system has this effect, according to Hayek, because it provides the procedure that makes it most likely that the information dispersed across a society can be harnessed to the benefit of all. [[[jt: note: these are empirical claims: relevant to regime advocacy level of political theory]]].

A cost of adopting the classical liberal system, as Hayek emphasizes, is that all particular individuals and groups within the system incur the risk of unmerited failures and disappointments. That cost can never be eliminated, though Hayek emphasizes the importance of our using our reason to minimize such disappointments. “It is a procedure which of course has never been ‘designed’ *but which we have gradually learned to improve* after we discovered how it increased the efficiency of men in the groups who had evolved it.”³⁷ Whether our aim is to produce larger candy crystals or conditions more favorable to the ideal of greater freedom for all, the designers of orders cannot evade the responsibilities that come with the discovery of their capacity to use their reason to bend spontaneous processes toward human purposes.

Hayek sometimes writes as though the distinction between *cosmos* and *taxis* is an existential distinction: a social order either *is* a *taxis* or it *is* a *cosmos*. Since a *cosmos* has no purpose while a *taxis* has a particular purpose, a social order either has a particular purpose or it has no purpose. On this

existential reading, the distinction between *cosmos* and *taxis* is absolute, and there can be no shading or overlap between these two social forms.³⁸

There is a more nuanced reading of this distinction, however, that I think better captures the deep architecture of systems theory. On this reading, the distinction between *cosmos* and *taxis* is not so much a distinction between kinds of social order, but a distinction between two *strategies* for social construction, two different ways of seeking to give normative reason traction in the social world. Viewed this way, Hayek's distinction between *cosmos* and *taxis* should be understood as a contributions to debates among liberals at the level of regime-type advocacy, rather than that at which liberal identify their deepest normative ideals.

Hayek's neglected essay "The Confusion of Language in Political Thought" begins with Hayek's familiar description of a *cosmos* as self-regulating system. The order within such a system results endogenously from the regularities of the behavior of its element. Those within a *taxis*, by contrast, are imposed by an external, exogenous agency. Regarding such an purposive agent, Hayek tells us: "Such an external factor may induce the formation of a spontaneous order also by imposing upon the elements such regularities in their responses to the facts of their environment that a spontaneous order will form itself."³⁹ Hayek then describes this as an "indirect method" of securing a social order, and he ascribes to it all the moral and informational advantages of *cosmoic* as opposed to *taxitic* social structurings. Crucially, Hayek emphasizes the importance of distinguishing between the spontaneity of the order and the spontaneity of the forms of behavior of the elements within such an order. "A spontaneous order may rest in part on regularities

which are not spontaneous but imposed.” And thus, “For policy purposes, there results thus the alternative whether it is preferable to secure the formation of an order by a strategy of indirect approach, or by directly assigning a place for each element and describing its function in detail.”⁴⁰

This distinction between “direct” and “indirect” strategies admits many divisions of degree. For example, Hayek believes that a legal order restricted to expositing and enforcing rules of just individual conduct will encourage the formation of a complex social order which, in general, will maximize the freedoms of all citizens (that is, will provide all citizens with their best chance at realizing their goals and ambitions). In some exceptional areas though---such as schooling---Hayek believes that more direct methods will be required to realize this goal of equal freedom for all. In advocating public funding of education, for example, Hayek is advocating taxis-style rules by which social resources would be collected and directed to the particular purpose of providing the means for equal schooling for all. Even there, though, there are less and more direct methods available. While advocating that the government guarantee that these means be made available for schooling, Hayek expresses his “grave doubts whether we ought to allow government to administer them”---preferring, it seems, some more competitive scheme involving educational vouchers.⁴¹ Hayek’s master maxim of feasibility seems to be that—for both moral and informational reasons---designers of legal orders for liberal societies should typically prefer the least direct (or most indirect) methods of realizing their social goals.⁴² This maxim, in my terms, guides Hayek to advocate the institutional regime of commercial society at the level of political theory. And it would

guide him also when considering various specific public policy options that might be proposed within that type of regime.

Hayek's rejection of social justice thus turns out merely to be an expression of strong skepticism of the direct, taxitic approach to social construction on grounds of feasibility.⁴³ At the level of political theory, and especially at the level of public policy, Hayek's presents his theory of information as giving us reason to be wary of the taxitic strategies of social construction.⁴⁴ But Hayek gives us no reason to object to social justice at the identificatory level of political philosophy. His idea of spontaneous order makes conceptual space for "constructivist" norms to evaluate both the product and the processes of spontaneous orders. In the social setting, cosmos and purpose, far from being opposites or rivals,⁴⁵ go together. In the social setting, spontaneous orders seem positively to require such normative evaluations: evaluations, that is, in terms of social justice.

This reading of Hayek makes ready sense of some passages that have long perplexed Hayek scholars (scholars, that is, in the traditional "Hayek-rejects-social-justice" school).⁴⁶ In the preface to *The Mirage of Social Justice*, Hayek notes that while he was completing his book an important, and seemingly rival, approach to liberal justice had appeared in John Rawls's *A Theory of Justice*. Hayek tells his readers that he decided not to include an extended discussion of Rawls's theory in his discussion because, despite what he expects to be the first impression of many readers, the differences between his view of liberal justice and that of Rawls are "more verbal than substantive."⁴⁷

How can Hayek think the differences between himself and Rawls about liberal justice are merely verbal? As we have seen, Hayek---and in this quite unlike Rawls---sometimes says that the concept justice can be applied only to human actions. His more careful formulations, however, reveal a more nuanced view: “To apply the term ‘just’ to circumstances other than human actions *or the rules governing them* is a category mistake.”⁴⁸ If “justice” can be applied not only to actions but to rules governing those actions, presumably that term can be applied to whole systems of rules—systems such as that given by a constitutional order. This is precisely Hayek’s view: “...there unquestionably also exists a genuine problem of justice in connection with the deliberate design of political institutions, [the problem to which Professor John Rawls has recently devoted an important book].”⁴⁹ Justice can sensibly be applied to the rules governing a society’s basic social and economic institutions. This can be accomplished through an evaluation of the general tendency of the effects of those rules on the social order and the people within it.⁵⁰

At the level of moral identification, the use of the term “social justice” to which Hayek objects as vacuous is only that where the term is used to evaluate particular distributions of goods that happen to emerge within a market society. In rejecting that sense of social justice, Hayek’s position is very like that of Rawls. Indeed, Hayek approvingly quotes an early essay of Rawls’s on just this point: “the task of selecting specific systems or distributions of desired things as just must be [as Rawls says] ‘abandoned as mistaken in principle, and it is in any case not capable of a definite answer.’”⁵¹ So, for Hayek as for Rawls, particular distributions of goods that happen to emerge in a society governed by liberal principles cannot in

themselves be described as just or unjust. The justness of a society can be tested only by considering the general distributional tendencies of the social order that emerges within that system of rules.

Hayek does not like the term “social justice.” The deep biology of Hayek’s view, however, need not react to social justice as though it were some dangerous allergen. According to that biology, Hayek affirms not merely the conceptual coherence of evaluating a liberal society in terms of what Rawls and others refer to as social justice. He also affirms the *moral necessity* of a society’s basic institutions passing muster by social and distributive standards. After all, it is a liberal theory of social justice that tells us why we should build laws on the model of rules of just individual conduct. Such a theory also tells us which taxitic deviations from the model—as with the public funding of schooling---can be pursued without conflict to our commitment to the ideal of freedom, and which cannot.⁵²

Social justice gives the Great Society its point: that norm allows us to know when the equal freedom promised by liberalism is in danger of being lost, and explains to us why that threat is something worth fighting back against.⁵³ Indeed, for Hayek, we might say, the phrase “The Great Society without social justice” belongs not to the category of error but to that of nonsense. That phrase would make about as much sense as “naturally-occurring rock candy on a string.”⁵⁴

Our distinction between political theory and political philosophy has helped us elucidate Hayek’s famous critique of social justice. The mythmakers of modern liberalism have encouraged the idea of a tight, and unique

connection between a moral commitment to social justice and the advocacy of social democratic institutions. The more tightly people are in the grip of the myth, the more likely we are to find their worries about the feasibility of social democratic institutional forms expressed as doubts about the norm of social justice itself. On the level of regime advocacy, critiques of “social justice” often stand in for first-level feasibility objections against direct, *taxitic* strategies of social construction. Hume’s objections to the ideal of perfect equality provide a nice survey of classical liberal objections to “social justice” at the level of regime advocacy. Governmental attempts to achieve equality, Hume suggests, are objectionable because such attempts 1) place corrupting power in the hands of governmental officials, 2) reduce incentives in a way that lowers overall productivity, and 3) destroy the hierarchies that are a practical prerequisite for many social goods, including social order itself.⁵⁵ But these are all these objections are based on empirical predictions about the ways that equality-seeking governmental agencies are likely to malfunction in the social world as Hume knows it.

Considered at the level of political philosophy, however, Hayek’s discussion of spontaneous order should give classical liberal writers pause before rejecting the very idea of social or distributive justice. The idea of society as a spontaneous order is compatible with the affirmation of social justice (a standard which is properly applied only to objects created by human intentionality). For liberal thinkers such as Hayek and Rawls, social justice is used to evaluate not particular distributions but inequalities between statistically significant groupings.⁵⁶

At the level of political philosophy, liberals committed to social justice can easily agree with Nozick that particular distributions, such as precisely which spouse goes to whom, cannot be determined by distributive. But the same identificatory level also helps us pose a question to Nozick and to every other thinker in the classical liberal tradition. What if the social institutions of a society were arranged in such a way that, as a predictable consequence of those institutions, mates tended to be “distributed” in a rigidly hierarchical class based way?⁵⁷ If, as a consequence of the institutions of a liberal society, enduring class-based hierarchies regularly emerged, would liberal justice be able to identify those institutional structures as unjust?

There is an interpretation of classical liberalism according to which even statistically-significant inequalities cannot properly be described as just or unjust. Libertarianism, which gives absolute priority to citizen’s economic liberties, may be such an interpretation. On that interpretation, classical liberalism affirms only a procedural conception of equality. Justice is a matter of people following certain rules. Distributive justice, insofar as there is any such thing, is satisfied when those rules are followed, no matter what the effects on statistically significant groups. As we will see in the next chapter, however, there is only problem with this purely formal conception of liberal justice. That problem is this: no major thinker in the classical liberal tradition has ever believed it.

¹ Theory of the Moral Sentiments, II.ii.1.10, Liberty Fund p. 82. Further: “In the race for wealth, and honours, and preferments, he may run as hard as he can, and strain every nerve and muscle, in order to outstrip his competitors. But if he should jostle, or throw down any of them, the indulgence of the spectators is entirely at an end. It is a violation of fair play, which they cannot admit of.” II.ii.2.2 LF 83.

² Liberal justice is a property of the actions of individuals, not of the distributions obtaining across the social order.

³ The passage from Hume continues, “The most rigorous inquisition too is requisite to watch every inequality on its first appearance; and the most severe jurisdiction, to punish and redress it. But besides, that so much authority must soon degenerate into tyranny, and be exerted with great partialities; who can possibly be possessed of it, in such a situation as is here supposed? Perfect equality of possessions, destroying all subordination, weakens extremely the authority of the magistracy, and must reduce all power nearly to a level, as well as property.” Principles of Morals, sec. III, pt. ii, 155. [add quotations from other historical figures: Adam Smith (Fleischacker cites TMS 390, LJ 9, though cautions that these passages are widely misread: p.12.), Manchester liberals?, Spencer, Mises].

⁴ Consider these comments by David Schmidtz regarding Rawls’s argument from the Original Position: “Suppose some bargainer say, ‘We didn’t come to the table to talk about how to distribute the stuff on the table. We came because the stuff on the table is ours. We came here to reclaim it.’ Would a thought experiment like mine be relevant to a world where people have [[jt check: missing the word “no” here??]] prior claims to the goods on the table? Maybe not, and maybe that is a good objection. But in that case, we must conclude not that we should reject *this* thought experiment but that we should reject *all* such thought experiments. All such experiments assume that we can focus on distributing goods as if goods were presenting themselves to us more or less in an unowned state---as if we were at liberty to distribute them in any manner we deem fair. If the assumption is wrong, then all such thought experiments are wrong.” Elements of Justice, 224, for more on this see pp. 220-27.

⁵ ASU, 149-50. David Schmidtz comments: “Nozick thought a bias against respecting persons lurks in the very idea of *distributive* justice. The idea can lead people to see goods as having been distributed by a mechanism for which we are responsible. Nozick believes there generally is no such mechanism and no such responsibility.” Elements of Justice, 216. [[On those rare occasions when thinkers in the classical liberal

tradition do affirm an idea of social or distributive justice, they do so only in a weak or qualified way. Sam Freeman, for example, says that Nozick “reluctantly” accepts the idea of distributive justice: whatever distribution emerges from market-based procedures, Nozick suggests, might be called just (*Rawls*, 87).⁵ Loren Lomasky takes this position explicitly, though with parenthetical shyness: “If the domain of ‘justice’ is coextensive with the rights that people have,” Lomasky states, “then any sets of property holdings that emerge from rightful activity are, by definition, (distributively) just.” But Lomasky, like Nozick, rejects the idea of social justice as an independent moral standard.]]

⁶ Lomasky *Persons, Rights and the Moral Community*, 125.

⁷ Mirage 65. [[Also find passage where Hayek refers to “the open sesame” effects of social justice talk]].

⁸ Mirage 69 and 68, respectively. See also 96,.....

⁹ mirage 66

¹⁰ “What we have to deal with in the case of ‘social justice’ is simply a quasi-religious superstition of the kind which we should respectfully leave in peace so long as it merely makes those happy who hold it, but which we must fight when it become the pretext of coercing other men. And the prevailing belief in ‘social justice’ is at present probably the gravest threat to most other values of a free civilization.” 66-7

¹¹ 62

¹² Mirage 97. “I believe that ‘social justice’ will ultimately be recognized as a will-o’-the-wisp which has lured men to abandon many of the values which in the past have inspired the development of civilization---an attempt to satisfy a craving inherited from the traditions of the small group but which is meaningless in the Great Society of free men.”

67

¹³ LLL2 p.75.

¹⁴ Mirage, get page. [[also, citations here to Polanyi’s work on system’s theory, on which Hayek builds]].

¹⁵ See International Gem Society website: <http://www.gemsociety.org/info/igem17.htm>. Written by Don Clark, CSM President, and “Learning the Principles of Glass Science and Technology from Candy Making.” Jain, H. and Jain, I.: <http://www.lehigh.edu/squiglyhorizontal> “S” mark) inmatsci/faculty/candy_making.pdf.

¹⁶ [[citation to article by Alexander Murphy on the idea of political differentiation]]

¹⁷ As a definitional matter, for example, we could sensibly pick out the grouping of red-headed natives of Rhode Island who were born in January. But the members of the grouping---being of different ages, having different interests, skills and educational

backgrounds, living in different parts of the country or in different countries of the world, and being unaware of one another---

¹⁸ (New Studies, 77). “A command regularly aims at a particular result or particular foreseen results, and together with the particular circumstances known to him who issues or receives the command will determine a particular action. By contrast, a rule refers to an unknown number of future instances and to the acts of an unknown number of future instances and to the acts of an unknown number of persons, and merely states certain attributes which any such action ought to possess.” *Mirage* 14

¹⁹ *New Studies*, p. 77.

²⁰ *Mirage* 15: cosmos/taxis distinction corresponds to Polanyi's distinction between polycentric and monocentric societies; and to Oakshott's distinction between nomocratic and teleocratic societies.

²¹ [[in previous draft I have discussion of complications here---that these forms can function at various levels and as subsets of each other....]]

²² [[JT note: this idea occurred to me while answering a graduate student's question after one of my Hayek lecture at The Social Change Workshop at Brown, July 2008. I do not know the student's name....].

²³ NS p. 75 This does not mean that a cosmos order will always be more effective than a taxis. As Hayek says elsewhere, “It is probably true that, at any given moment, a unified organizational design by the best experts that authority can select will be the most efficient that can be created.” But Hayek warns that such a form of organization will not likely remain efficient for long, especially if that initial design is made the starting point for all future evaluations of how the goods might best be provided, and if those initially put in charge are allowed to be the main judges of what changes might be necessary (*Con Lib* 250).

²⁴ A cosmos, as such, has no such limiting element. To adopt the terms of Polanyi, the decision-making structure within a cosmos is “poly-centric” rather than “mono-centric.” For this reason, information may be put to rational uses within a cosmos so as to create vastly more complex orders than is possible within a taxis.

²⁵ If this is appropriate, then none of them could reasonably reject the positions/roles each is assigned in societies pursuit of that goal---even if, unlike a barista at Starbuck or a lance corporal in the US Army, they cannot ordinarily leave that organization and join another . It is consideration of this question that leads Hayek to conclude humans social orders, esp that of the liberal west, are cosmos.

²⁶ *Mirage* 39

²⁷ *Mirage* 4.

²⁸ Because these rules come down to us by an evolutionary process of selection, we often may not be able fully to understand or explain why these rules function well toward the realization of human purposes. These rules come down to us because the group that had them prevailed, but sometimes even the reason why the group originally adopted them and the reason they in fact prevailed may be quite different. “And although we can endeavor to

find out what function a particular rule performs within a given system of rules, and to judge how well it has performed that function, and may well as a result try to improve it, we can do so only against the background of the whole system of other rules which together determine the order of action in that society.” Mirage 4-5. Mirage 5.

²⁹ “while the deliberate uses of spontaneous ordering forces...thus considerably extends the range and complexity of actions which can be integrated into a single order, it also reduces the power that anyone can exercise over it without destroying the order” 75

³⁰ Bill Clinton debate against George H.W. Bush: “George Bush doesn’t really care about America, but I do.” And then, “George Bush, if you won’t use your power to help America, then stand aside, because I will.” [[orthodox historical reading of FDR rhetoric, as repeated by Cass Sunstein in *The Second Bill of Rights*, for example. For a different reading of FDR’s claim to be responding to citizen demands, see Amity Schaes *The Forgotten Man* 2007.]]

³¹ Mirage 99. As he says elsewhere, “..like most attempts to pursue an unattainable goal, the striving for it will produce highly undesirable consequences, and in particular lead to the destruction of the indispensable environment in which the traditional moral values alone can flourish, namely personal freedom.” Mirage 67.

³² Mirage 67

³³ As Hayek puts it, “there are no principles of individual conduct which would produce a pattern of distribution which as such could be called just, and therefore also no possibility for the individual to know what he would have to do to secure a just remuneration of his fellows.” Mirage 83

³⁴ Mirage 78. For other formulations of Hayek’s claim that “social justice” is logically incoherent, see Mirage 62, 69, and 96.

³⁵ Mirage 64.

³⁶ Mirage 99.

³⁷ Mirage 70-71, emphasis mine.

³⁸ When Hayek describes the Great Society as a cosmos, on this reading, he means that form of social order that has no purpose, including that of satisfying normative ideal that might be defined by a (distribution-sensitive) conception of social justice.

³⁹ New Studies, 74. I am indebted to Adam Tebble for first bringing this important essay to my attention.

⁴⁰ New Studies, 74-5.

ⁱ⁴¹ Mirage 84.

⁴² JT: note also that some social democratic regimes---property owning democracy most notably---might well claim to prefer similarly indirect, “ex ante” strategies.....There can be no simple, existential choice between social order by (intention-less) cosmos and (intentional) taxis. This is probably what Hayek means when he warns the reader that, in laying out his distinction between cosmos and taxis, he---because of the general

unfamiliarity of readers with the these issues--- had been “driven to make hard distinctions.” [jt: lost citation: I wrote down Mirage 74, but don’t see this there...].

⁴³ JT: need to do more work here: in what precise sense is welfare state liberalism a more “direct”/taxitic strategy than constitutional capitalism? Is property-owning democracy more direct? What about liberal socialism? Do these regime types really lie on a uni-directional cosmos-toward-taxis continuum?

⁴⁴ “[T]he prime public concern must be directed not towards particular known needs but towards the conditions for the preservation of a spontaneous order which enables the individuals to provide for their needs in manners not known to authority....” Thus: “The most important of the public goods for which government is required is thus not the direct satisfaction of any particular needs, but the securing of opportunities of mutually providing for their respective needs Mirage 2.

⁴⁵
⁴⁶ [[Work through and add citations as appropriate here: Steven Lukes “Social Justice: The Hayekian Challenge”, *Critical Review* 11/1 (Winter 1997) pp. 65-80; David Johnston “Hayek’s Attack on Social Justice”. (also chapter in book by Michael Novack).

⁴⁷ Mirage xiii. (Note that Hayek makes that statement in the preface of a book called The Mirage of Social Justice in reference to a book entitled A Theory of Justice!)

⁴⁸ Mirage 31.

⁴⁹ Mirage 100.

⁵⁰ Thus, Hayek notes regarding the term “social justice” that “it is to the present day sometimes employed in learned discussions to evaluate the effects of the existing institutions of society.” The footnote to that sentence cites Rawls’s TJ as an example. [For yet another approving reference to Rawls, see footnote 16 on Mirage 74, noting that for Rawls as for thinkers in the classical liberal tradition, justice in a competitive system is to be found in the way that competition is carried on rather than in its results. JT, must mean: “in the way it is carried out, as evaluated in terms of the GENERAL TENDENCY OF THE EFFECTS of competitions carried out under such rules, rather than in its PARTICULAR effects. SEE ALSO NAGEL IN CAMBRIDGE COMPANION: THAT RAWLS DP APPLIES ONLY TO “LARGE-SCALE STATISTICAL EFFECTS ON THE LIFE PROSPECTS OF DIFFERENT GROUPS”, NOT TO THE “COUNTLESS INEQUALITIES AMONG INDIVIDUALS THAT WILL INEVITABLY ARISE AS PEOPLE MAKE CHOICES AND INTERACT, SUCCEED OR FAIL IN THEIR EFFORRTS, IN THE CONTEXT OF ANY SOCIOECONOMIC STRUCTURE, HOWEVER JUST” QUOTATIONS FROM NAGEL, P71 SOCIAL JUSTICE IS A TOOL FOR EVALUATING “THE BROAD DESIGN OF THE SYSTEM” 71 jt notice: if the subject of justice is ‘the broad design’ of the system, and hayek accepts this, this suggests that hayek also accepts what nagel identifies as the key, evolutionarily evolved insight of rawls: the insight that led him to abandon a narrowly formal/pol conception of equality and broaden the scope of moral evaluation to include questions about substantive inequality: Nagel: “the evolution has been due above all to recognition of the importance of social and economic structures, equally with pol and legal institutions, in shaping people’s lives and a gradual acceptance of social responsibility for their effects. When the same moral attention was turned on these that hadd earlier been focused strictly on

political institutions and the uses of political power, the result was an expansion of the liberal social ideal and a broadened conception of justice. Indeed the use of the terms “just” and unjust” to characterize not only individual actions and laws but entire societies and social or economic systems is a relatively recent manifestation of this change of outlook” (63).

⁵¹ Mirage 100, quoting Rawls “Constitutional Liberty and the Concept of Justice” *NOMOS IV*, Justice, New York, 1963, p. 102, Mirage ftnt44, p.183. The quotation from Rawls continues: “Rather, the principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons engaging in the are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just (or at least not unjust).”

⁵² In a remarkably frank self-diagnosis, Hayek admits at one point that his strong aversion to social justice may well be “unduly allergic.” [get citation]. He admits, that is, that he is suffering from a malady like the one I call *social justicitis*.

⁵³ IMPORTANT: MUST BUILD IN: TOM NAGEL (CAMBRIDGE COMPANION ARTICLE, P 63) SAYS THAT RAWLS’S KEY CONTRIBUTION WAS TO ENLARGE THE RANGE OF JUSTICE-CONCERNS FROM THE EXAMINATION OF THE EFFECTS OF STRICTLY POLITICAL FACTORS ON CITIZENS TO THE EXAMINATION OF “SOCIAL AND ECONOMIC STRUCTURES” ON CITIZENS AS WELL. Eg: “Indeed, the use of the terms “just” and “unjust” to characterize not only individual actions [[jt: a la hayek!] and laws but entire societies and social and economic systems is a relatively recent manifestation of this change of outlook.” JT: need to explicate that Hayek affirms social justice in the broad sense

⁵⁴ OR something like: as Hayek says, we must be careful not to “throw out the baby with the bathwater” (mirage, get citation). For Hayek, the institutions of social democracy are mere bathwater. But, for Hayek as much as for Rawls, social justice is our baby.

⁵⁵ For this tri-partite exegetical analysis of Hume, see Russell Hardin “From Bodo Ethics to Distributive Justice” *Ethical Theory and Moral Practice*, 2: 399-413, 1999, esp at p. 400. As Hardin summarizes, “David Hume, writing about 1751, saw distributive justice in the modern sense as pernicious. He attributed concern with such an abstract principle to writers who argued from pure reason with no attention to the possibilities in their actual world...” 399.

⁵⁶ [[jt: note: this is Nagel’s formulation quoted earlier. Check with Bob Taylor about this use of the term ‘statistically significant’]]

⁵⁷ [[jt note, after my Bradley Lecture at AEI in March 2008, several audience members (including Galston) talked enthusiastically about Charles Murray’s discussion of spouse-distribution patterns in his latest book. Looked at correlations between education level and spouse-selection...check this.]]